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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,759

05/05/2006

Ralf Esser

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1441

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03/01/2011

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EXAMINER

CHIU, RALEIGH W

ART UNIT

PAPER NUMBER

3711

MAIL DATE

DELIVERY MODE

03/01/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,759	<b>Applicant(s)</b> ESSER, RALF	
	<b>Examiner</b> Raleigh W. Chiu	<b>Art Unit</b> 3711	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15, 17-23 and 30 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-14 and 25-29 is/are rejected.
- 7) ☐ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Claim Rejections - 35 USC § 112**

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term “the imprint” (line 5) lacks a proper antecedent basis.

### **Claim Rejections - 35 USC § 103**

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-4, 6-12, 14 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black (USPAPN 2002/0092218) in view of Heister (DE 4209105 A1) as previously applied.

Regarding claims 1-4, 6 and 14, Black discloses a sports net with advertising printed thereon and also having permanently-open holes distributed over its surface. Nets can be manufactured having various mesh sizes and shapes, depending on the application and the strength needed. See paragraph [0029]. The strength of the Black net is considered to be directly correlated to the recited “optimized flow of forces within the net structure”. That is to say, net manufactured with high strength is considered to be able to better withstand the flow of

Art Unit: 3711

forces that are applied to the net structure. Although Black does not explicitly describe a foil net, Heister teaches that advertising nets can also be made from transparent sheets of metal or plastic; such sheets are broadly considered to be foils. As it has been well-established that the conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art and to select features from the prior art to effect results expected from these features is within the purview of 35 USC 103, the selection of any known netting material to form the Black net, including foil, would be within the level of ordinary skill in the art. In other words, as the Heister teaches that it is old and well-known in the art to print on a perforated metal sheet or foil and that one of ordinary skill would be able to recognize that such a sheet/foil broadly corresponds to a net, it would have been obvious to one of ordinary skill in the art to make the Black printed net using a different material such as metal since it has been held to be within the level of ordinary skill to select a known material as a matter of obvious design choice.

With further regard to claim 6, Black does not explicitly disclose the recited area ratio of holes to foil of 3:1 or more. However, Black discloses that it is understood that hundreds of different size/shape combinations are possible. See paragraph [0029]. Large mesh sizes are considered to have a large area ratio of holes to foil. Discovering an optimum value of a result effective variable has been held to be within the capabilities of the person of ordinary skill in the art. It would have been obvious to a person having ordinary skill in this art, by routine experimentation, to provide Black with any reasonable mesh size, including the recited ratio of holes to foil of 3:1 or more, depending on the specific net application.

Art Unit: 3711

Regarding claims 7-11, Black discloses that it is old and well-known in the net art to provide fixing means such as straps to attach the net to a support structure such as a pole. It would have been an obvious matter of design choice to use any number of fasteners or loops or lugs necessary to satisfactorily attach the net to the sports pole.

Regarding claims 25-28, the Black net as modified above is considered to be inherently capable of being used as recited. The physical characteristics of the Black net are considered to allow the Black net to be inherently capable of being used as a sports net. That is to say, a net used to protect spectators from interfering, or being affected by, the action taking place on the field is considered to be sufficiently sturdy to be capable of being able to be extended between two supports poles or over a frame for use as a sports net.

Regarding claim 29, it would have been an obvious matter of design choice to make the Black net holes with rounded corners, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Heister and Matsumoto (USPN 5,601,907) as previously applied.

Matsumoto teaches that it is old and well-known in the art that nets can be formed by welding joints. See column 8, lines 55-62. "Textile" can be defined as: a woven or knitted fabric; the knitted arrangement of the fibers in the Matsumoto net is considered to provide a textile structure.

Art Unit: 3711

### **Allowable Subject Matter**

6. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claims 15, 17-23 and 30 are allowed.

### **Response to Arguments**

8. Applicant's arguments filed 16 February 2011 have been fully considered but they are not persuasive for the reasons set forth above.

### **Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (571) 272-4408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim, can be reached on (571) 272-4463.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

It is noted that all practice before the Office is in writing (see 37 C.F.R. § 1.2) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations

Art Unit: 3711

(37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority of Petitioner's/Caller action(s).

/Raleigh W. Chiu/  
Primary Examiner, A.U. 3711

RWC:dei:feif  
24 February 2011